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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,412	10/08/2003	Seiin Kobayashi	5585	7425

7590 08/18/2005

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/681,412

Applicant(s)

KOBAYASHI, SEIIN

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed June 8, 2005, has been entered. Claims 1 and 8 have been amended as requested. The pending claims are 1-16.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-16 stand rejected under 35 USC 103(a) as being unpatentable over US 2004/0258870 issued to Oakey et al. in view of US 5,330,806 issued to Bythewood et al., D492,426 issued to Strickler, and D479,424 issued to Sellman, Jr.

Applicant has amended independent claims 1 and 8 to limit the undulations to the shape of a double chevron and being present on at least adjoining edges of the tile. However, said amendment is insufficient to overcome the cited prior art rejection. Specifically, Sellman teaches said chevrons. Additionally, it would have been readily obvious to one of ordinary skill in the art to modify the shape of the undulations from that taught by Oakey, Bythewood, or Strickler since it has been held that a mere change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Daily*, 149 USPQ 47. Therefore, claims 1-16 stand rejected.

4. Claim 1 is rejected under 35 USC 103(a) as being unpatentable over US 3,120,083 issued to Dahlberg et al. alone, or in view of D479,424 issued to Sellman, Jr.

Dahlberg discloses interlocking carpet tiles wherein said tiles having undulations along the edges thereof for interlocking with adjacent carpet tiles (col. 1, lines 9-22). The carpet tiles comprise an upper pile layer and an intermediate cushioning layer, which may be attached by adhesive, needling, or both (col. 2, line 47-col. 3, line 4). In one embodiment, the carpet tiles cover less than the full area of a room (i.e., area rug) (col. 6, lines 51-55). In this case, the perimeter edges of the border tiles are finished with an edge strip (col. 6, line 55-col. 7, line 43). Thus, Dahlberg teaches the presently claimed invention with the exception that the finished edges are serged and the specific chevron-shaped edges.

With respect to the former, it is argued that serged edges would have been obvious alternative to the exemplary edging strips of the Dahlberg invention. Specifically, Dahlberg teaches edge treatments for border tile edges in order to provide a finished look and to provide a taper down to the floor surface. Applicant is hereby given Official Notice that serged edges for area rugs are readily known in the art. [Note applicant's disclosure at page 2, line 19). As such, it would have been obvious to one skilled in the art to substitute a serged border edge for the edge strip of Dahlberg since both treatments are recognized in the art as equivalent methods of forming finished rug or carpet edges.

With respect to the latter exception, it would have been obvious to one skilled in the art to employ the claimed chevron shape as the undulations of Dahlberg. Specifically, said chevrons are readily known in the art as evidenced by Sellman (see Figure). Thus, it would have been obvious to one skilled in the art to modify the Dahlberg invention with chevrons as the undulations in order to interlock the tiles thereby preventing lateral

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movement thereof. Alternatively, a change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47. Therefore, claim 1 is rejected.

5. Claims 8, 15, and 16 are rejected under 35 USC 103(a) as being unpatentable over US 3,120,083 issued to Dahlberg et al. alone or in view of D479,424 issued to Sellman, Jr. and in further view of D492,426 issued to Strickler.

With respect to claim 8, the cited Strickler reference teaches an area rug comprising both large and small tiles. Hence, it would have been obvious to one skilled in the art to change the shape and size of the Dahlberg tiles in a manner suggested by Strickler in order to provide an aesthetically pleasing area rug having a variety of design options. Therefore, claim 8 is also rejected.

With respect to claims 15 and 16, it is noted that Dahlberg teaches tiles that are 18" square (col. 4, lines 31-32 and col. 6, lines 27-28). However, the cited art does not explicitly teach the claimed large and small tile dimensions. It is argued that it would have been obvious to select the claimed dimensions, since such a modification would have involved a mere change in the size and/or shape of the tiles. A change in size or shape is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 and *In re Dailey*, 149 USPQ 47. Therefore, claims 15 and 16 are rejected as being obvious over the prior art.

6. Claims 2-7 are rejected under 35 USC 103(a) as being unpatentable over US 3,120,083 issued to Dahlberg et al. alone, or in view of D479,424 issued to Sellman, Jr. and in further view of US 2004/0258870 issued to Oakey et al.

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Claims 9-16 are rejected under 35 USC 103(a) as being unpatentable over US 3,120,083 issued to Dahlberg et al. alone, or in view of D479,424 issued to Sellman, Jr. and in further view of D492,426 issued to Strickler and US 2004/0258870 issued to Oakey et al.

Dahlberg, Sellman, and Strickler fail to teach the use of a bottom layer of adhesive. However, it is known in the art to employ adhesive backings to adhere carpet tiles to flooring substrates. For example, Oakey teaches a re-configurable modular floor covering comprising modular units (i.e., carpet tiles) that are easily assembled in a variety of designs by the consumer (abstract and sections [0008] and [0012]). The tiles are adhered to a floor by use of pressure sensitive adhesive strips or dots on the backside thereof or linked together by one-sided vinyl adhesive tape, hook-and-loop fasteners, magnets, etc. so as to resist movement (sections [0015] and [0016]). Thus, it would have been readily obvious to one skilled in the art to employ an adhesive backing to the Dahlberg carpet tiles in order to facilitate adhesion of the tiles to a flooring substrate. Therefore, claims 2, 4-6, 9, and 11-13 are rejected.

With respect to claim 3 and 10, applicant is hereby given Official Notice that the claimed pile materials are well known in the art of carpets. Specifically, commercial carpet faces are conventionally made of nylon, polypropylene, polyester, wool, cotton, and/or acrylic fibers. Therefore, it would have been readily obvious to one skilled in the art to select these materials when choosing a carpet pile for the Dahlberg invention since said materials are common in the art of carpets. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Hence, claims 3 and 10 are also rejected.

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With respect to claims 7 and 14, it is argued that the methods of coloring are only given weight to the extent that said method produces a structural difference in the final product. Applicant is hereby given Official Notice that carpets and rugs are inherently colored in some manner to provide an aesthetically pleasing product for commercial sale. Typical methods of color include tufting colored yarns in a graphic pattern and printing of the tufted yarns. As such, claims 7 and 14 are rejected as being obvious over the cited prior art since it would have been readily obvious to one skilled in the art to color the area tiles of Dahlberg by known means in order to provide a variety of designs.

Response to Arguments

7. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.
8. Specifically, applicant argues the references individually. In response, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
9. Additionally, applicant argues the prior art does not teach the combination of interlocking edges with serged edges on individual modules. In response, it is argued that it would have been obvious to employ serged edges for the perimeter of the area rug assembly and the interlocking edges for the interior tile edges. Note Oakey teaching of finished border or perimeter tile edges in order to provide a finished look. Additionally, note it is obvious to employ interior edges with undulations in order to facilitate

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interlocking of said tiles. Therefore, applicant's arguments are unpersuasive and the above rejection is maintained.

Conclusion

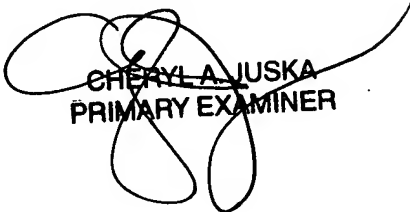
10. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on June 8, 2005, prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
August 15, 2005